

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY LLC, and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' MOTION TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO MICROSOFT'S
MOTIONS IN LIMINE

**NOTE ON MOTION CALENDAR:
Friday, October 26, 2012**

DEFENDANTS' MOTION TO FILE DOCUMENTS UNDER
SEAL IN SUPPORT OF DEFENDANTS' OPPOSITION TO
MICROSOFT'S MOTIONS IN LIMINE
CASE NO. C10-1823-JLR

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I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively “Motorola”) respectfully move this Court for leave to file under seal the following:

1. Exhibits 13-14, 16-17, 19-20, 24-32, 34-35, and 37-39 to the Second Declaration of Stuart W. Yothers; and
2. Defendants’ Opposition to Microsoft’s Motions *In Limine* (“Opposition”).

II. BACKGROUND

Microsoft Corporation (“Microsoft”) and Motorola entered into a stipulated Protective Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order outlines categories of material that should be maintained in confidence, along with procedures for sealing confidential material when included in documents filed with the Court. Specifically, paragraph 1 specifies that:

Confidential Business Information is information which has not been made public and which concerns or relates to the trade secrets ... amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, the disclosure of which information is likely to have the effect of causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained....

Id. at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6 specifies that:

(1) Confidential Business Information pertaining to licensing or other commercially sensitive financial information shall not be made available under this paragraph 6 to such designated in-house counsel; the supplier shall designate such Confidential Business Information pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S NAME] CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of such document that may be disseminated to the two in-house counsel designated under this paragraph 6....

1 *Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states
2 in relevant part that:

3 During the pre-trial phase of this action, such information, whether submitted in
4 writing or in oral testimony, shall be disclosed only *in camera* before the Court
5 and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules
6 of the United States District Court for the Western District of Washington.

7 *Id.* at 2.

8 Thus, the Protective Order provides that Motorola may request to seal documents by
9 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of
10 Washington. Local Rule CR 5(g)(3) states that:

11 If a party seeks to have documents filed under seal and no prior order in the case
12 or statute specifically permits it, the party must obtain authorization to do so by
13 filing a motion to seal or a stipulation and proposed order requesting permission
14 to file specific documents under seal. The court will allow parties to file entire
15 memoranda under seal only in rare circumstances. A motion or stipulation to seal
16 usually should not itself be filed under seal. A declaration or exhibit filed in
17 support of the motion to seal may be filed under seal if necessary. If possible, a
18 party should protect sensitive information by redacting documents rather than
19 seeking to file them under seal. A motion or stipulation to seal should include an
20 explanation of why redaction is not feasible.

21 Similarly, federal law recognizes that courts should protect trade secrets or other
22 confidential commercial information by reasonable means, permitting the filing under seal of
23 documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a
24 court may require that (1) “a trade secret or other confidential research, development, or
25 commercial information not be revealed or be revealed only in a specified way” and (2) “the
26 parties simultaneously file specified documents or information in sealed envelopes...”).

27 Though courts recognize a general right to inspect and copy public records and documents,
28 including judicial records, the United States Supreme Court has stated that this right is limited.
29 “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory
30 power over its own records and files, and access has been denied where court files might have
31 become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598

(1978). In discussing examples of improper purposes, the Court indicated that courts are not to serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

As the Ninth Circuit stated:

The law, however, gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. See Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the district court to issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden.” The Supreme Court has interpreted this language as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

Phillips v. General Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002).

III. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA TO FILE THIS MOTION FOR LEAVE TO SEAL

In accordance with the Protective Order and the above-referenced authority, Motorola moves to file the following documents under seal for the stated reasons:

A. Exhibits 13-14, 16-17, 19-20, 24-32, 34-35, and 37-39 to the Second Declaration of Stuart W. Yothers

Exhibit 13 is a true and correct copy of excerpts from the Declaration of Prof. David. J. Teece, dated January 30, 2012, filed in Germany in *General Instrument Corp. v. Microsoft Corporation*, Docket No. 2 O 376/11, produced by Microsoft in this action, and bearing production numbers MS-MOTO_1823_00002271028-33, 048-51, and 065. This document, which is designated “CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER,” contains descriptions of Motorola’s confidential business and licensing practices. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Due to presence of this highly confidential information, Exhibit 13 should be sealed in its entirety.

Exhibit 14 is a true and correct copy of Tab A (“Materials Considered”) of the August 10, 2012 Rebuttal Expert Report of Roger S. Smith. The Smith report includes an examination of, and discloses, confidential and non-public financial and business information relating to both

1 Microsoft and Motorola, and relating to licensing and business practices and history. Disclosure
2 of that information to third parties and other party employees not covered by the protective order
3 would have the potential to lead to competitive harm. The entire Smith Rebuttal Report, including
4 Tab A, was previously submitted as Exhibit 63 to the September 5, 2012 Second Declaration of
5 Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's Opposition to
6 Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar
7 (Dkt. No. 392), and was ordered sealed by the Court (Dkt. No. 432).

8 Exhibit 16 is a true and correct copy of a document entitled "Motorola Mobility's
9 Memorandum in Opposition to Microsoft's Motion for Partial Termination of the Investigation,"
10 filed on July 12, 2012, in *In The Matter of Certain Gaming and Entertainment Consoles, Related*
11 *Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.), and served on Microsoft
12 on the same day. This document, which is designated "CONTAINS CONFIDENTIAL
13 BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER" under the terms of the
14 Protective Order in the '752 ITC case, contains extensive citation to and quotation and discussion
15 of a confidential license between Google (itself a non-party to this litigation) and MPEG LA, also
16 a non-party to this litigation. Microsoft and Motorola agree that that license is itself confidential.
17 (See Dkt. Nos. 448 at 5 and 468 at 4.) Disclosure of this information to third parties and other party
18 employees not covered by the protective order would have the potential to lead to competitive harm.
19 Due to presence of this highly confidential information throughout the exhibit, Exhibit 16 should be
20 sealed in its entirety.

21 Exhibit 17 is a true and correct copy of a document entitled "Surreply by Complainants in
22 Opposition to Microsoft's Motion for Partial Termination of the Investigation," filed on August
23 16, 2012, in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and*
24 *Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.), and served on Microsoft on the same
25 day. This document, which is designated "CONTAINS CONFIDENTIAL BUSINESS
26 INFORMATION, SUBJECT TO PROTECTIVE ORDER" under the terms of the Protective

1 Order in the '752 ITC case, contains extensive citation to and quotation and discussion of a
2 confidential license between Google and MPEG LA, both non-parties to this litigation. Microsoft
3 and Motorola agree that that license is itself confidential. (See Dkt. Nos. 448 at 5 and 468 at 4.)
4 Disclosure of this information to third parties and other party employees not covered by the protective
5 order would have the potential to lead to competitive harm. Due to presence of this highly confidential
6 information throughout the exhibit, Exhibit 17 should be sealed in its entirety.

7 Exhibit 19 is a true and correct copy of the Declaration of K. McNeill Taylor, Jr. in
8 Support of Defendants' Motion for Partial Summary Judgment, dated March 30, 2012. The
9 Taylor Declaration references information and communications exchanged between the parties
10 that was kept confidential and may be covered in part by a non-disclosure agreement. The Taylor
11 Declaration also discloses and summarizes the details of highly confidential and proprietary
12 information relating to Motorola licenses with third parties and Motorola licensing practice,
13 information believed to be of substantial value to Motorola. Disclosure of this information to third
14 parties and other party employees not covered by the protective order would have the potential to
15 lead to competitive harm. Exhibit 19 should be sealed. The Taylor Declaration was previously
16 submitted as Dkt. No. 232, and was ordered sealed by the Court (Dkt. No. 294). A redacted
17 version of the Taylor Declaration was submitted to the Court as Dkt. No. 229.

18 Exhibit 20 is a true and correct copy of excerpts of the Rebuttal Testimony of Kirk Dailey,
19 marked as Hearing Exhibit CX-778C and admitted into evidence in *In The Matter of Certain*
20 *Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-
21 TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0398598
22 and MOTM_WASH1823_0398624-625. This testimony was marked as containing Confidential
23 Business Information and was admitted as a Confidential Hearing Exhibit in ITC Inv. No. 337-
24 TA-752. Pursuant to an agreement between the parties, this testimony was produced and may be
25 relied upon in this case. It has been marked as "Contain[ing] Motorola Mobility, Inc. and/or Third
26 Party Confidential Business Information, Subject to Protective Order – Attorneys' Eyes Only."

1 Accordingly, this confidential information is covered by the protective order in both cases.
2 Throughout his testimony, Mr. Dailey disclosed highly confidential information about Motorola's
3 licenses, licensing history and internal business practices. Disclosure of this information to third
4 parties and other party employees not covered by the protective order would have the potential to lead
5 to competitive harm. Due to presence of this highly confidential information throughout the exhibit,
6 Exhibit 20 should be sealed in its entirety. The entire document from which these excerpts were
7 taken was previously submitted to the Court as Exhibit 4 to the March 30, 2012 Declaration of
8 Kevin J. Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230),
9 and was ordered sealed by the Court (Dkt. No. 294).

10 Exhibit 24 is a true and correct copy of the September 2011 Patent License Agreement
11 between Microsoft Corporation and Samsung Electronics Co. Ltd., bearing production numbers
12 MS-MOTO_1823_00002244552-575. This license agreement is a highly confidential agreement
13 between Microsoft and Samsung, a non-party to this litigation, and has been marked by Microsoft
14 as "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER."
15 Although the agreement indicates that the parties may disclose its existence to third parties, the
16 terms of the agreement were kept in confidence. Disclosure of this information to third parties and
17 other party employees not covered by the protective order would have the potential to lead to
18 competitive harm. Due to presence of this highly confidential information throughout the license,
19 Exhibit 24 should be sealed in its entirety. This document was previously submitted to the Court
20 as Exhibit 64 to the September 5, 2012 Second Declaration of Samuel L. Brenner In Support of
21 Motorola Mobility's and General Instrument's Opposition to Microsoft's Rule 702 Motion to
22 Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered
23 sealed by the Court (Dkt. No. 432).

24 Exhibit 25 is a true and correct copy of an April 4, 2012 letter from Arthur W. Harrigan,
25 Jr., of Danielson Harrigon Leyh & Tollefson LLP, counsel for Microsoft, to Ralph Palumbo, of
26 the Summit Law Group, and Jesse J. Jenner, of Ropes & Gray LLP, counsel for Motorola. This

1 letter discusses a confidential agreement of the parties, which Microsoft has indicated should itself
2 be filed under seal. (See Dkt. No. 448 at 6.) Accordingly, Exhibit 25 should be sealed.

3 Exhibit 26 is a true and correct copy of an April 4, 2012 letter from Ralph Palumbo, of the
4 Summit Law Group, counsel for Motorola, to Arthur W. Harrigan, Jr., of Danielson Harrigon
5 Leyh & Tollefson LLP, counsel for Microsoft. This letter discusses a confidential agreement of
6 the parties, which Microsoft has indicated should itself be filed under seal. (See Dkt. No. 448 at
7 6.) This letter also contains extensive citation to and discussion of numerous other documents
8 containing confidential material. Accordingly, Exhibit 26 should be sealed.

9 Exhibit 27 is a true and correct copy of the March 20, 2012 deposition of K. McNeill
10 Taylor, Jr., which was designated Highly Confidential and which was taken under oath in New
11 York, NY (filed under seal). Throughout his testimony, Mr. Taylor disclosed highly confidential
12 information about Motorola's licenses, licensing history, internal business practices, and
13 confidential communications between the parties' respective legal departments. Disclosure of this
14 information to third parties and other party employees not covered by the protective order would
15 have the potential to lead to competitive harm. Due to presence of this highly confidential
16 information throughout the transcript, Exhibit 27 should be sealed in its entirety. This document
17 was previously submitted to the Court as Exhibit 1 to the March 30, 2012 Declaration of Kevin J.
18 Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230), and was
19 ordered sealed by the Court (Dkt. No. 294).

20 Exhibit 28 is a true and correct copy of selected pages from the transcript of the January
21 20, 2012 hearing held in *In The Matter of Certain Gaming and Entertainment Consoles, Related*
22 *Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, which
23 reproduces the confidential sworn testimony given by Kirk W. Dailey and bears non-consecutive
24 production numbers MOTM_WASH1823_0401216-427 (filed under seal). This sworn testimony
25 was given during a confidential session in the ITC hearing and is covered by the Protective Order
26 in that case. Pursuant to an agreement between the parties, this testimony was produced and may

1 be relied upon in this case. It has been marked as “Contain[ing] Motorola Mobility, Inc. and/or
2 Third Party Confidential Business Information, Subject to Protective Order – Attorneys’ Eyes
3 Only.” Accordingly, this confidential information is covered by the protective order in both cases.
4 Throughout his testimony, Mr. Dailey disclosed highly confidential information about Motorola’s
5 licenses, licensing history and internal business practices. Disclosure of this information to third
6 parties and other party employees not covered by the protective order would have the potential to
7 lead to competitive harm. Due to presence of this highly confidential information throughout the
8 transcript, Exhibit 28 should be sealed in its entirety. This document was previously submitted to
9 the Court as Exhibit 2 to the March 30, 2012 Declaration of Kevin J. Post in Support of
10 Defendants’ Motion for Partial Summary Judgment (Dkt. No. 230), and was ordered sealed by the
11 Court (Dkt. No. 294).

12 Exhibit 29 is a true and correct copy of a document entitled “Annex 1” and “Chronology of
13 MMI and Microsoft negotiations and litigation,” submitted as Annex 1 to Motorola’s Response to
14 the European Commission. This document contains highly confidential information regarding the
15 parties’ licensing and settlement practices and histories. Disclosure of this information to third
16 parties and other party employees not covered by the protective order would have the potential to
17 lead to competitive harm. Due to presence of this highly confidential information, Exhibit 29
18 should be sealed in its entirety.

19 Exhibit 30 is a true and correct copy of a document bearing production number MS-
20 MOTO_1823_00002288984. This document comprises a redacted email communication to certain
21 Microsoft legal employees, along with an un-redacted email communication from Brad Smith,
22 Microsoft’s General Counsel and Executive Vice President, Legal and Corporate Affairs to Scott
23 Offer, Motorola’s Senior Vice President and General Counsel. This document was produced by
24 Microsoft and was marked as “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO
25 PROTECTIVE ORDER.” In accordance with the protective order in this case, this
26 communication should not be disclosed to third parties and other party employees not covered by

1 the protective order. Accordingly, Exhibit 30 should be sealed in its entirety. This document was
2 previously submitted to the Court as Exhibit 26 to the March 30, 2012 Declaration of Kevin J.
3 Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230), and was
4 ordered sealed by the Court (Dkt. No. 294).

5 Exhibit 31 is a true and correct copy of a document entitled "Complaint on Behalf of
6 Microsoft to the European Commission" and "Google/Motorola Mobility Inc.'s Infringements of
7 Article 102 TFEU," dated February 22, 2012, and prepared by Covington & Burling LLP. This
8 document, which is designated "Confidential Contains Business Secrets," was apparently provided
9 to the EC on a confidential basis, and contains confidential information about Motorola's and
10 Microsoft's licensing and business practices, as well as confidential information regarding
11 negotiations between the parties. (This document is also marked "Non-confidential vis-à-vis
12 Motorola Mobility," and has apparently been redacted by Covington & Burling LLP.) Disclosure
13 of this information to third parties and other party employees not covered by the protective order
14 would have the potential to lead to competitive harm. Due to presence of this highly confidential
15 information, Exhibit 31 should be sealed in its entirety.

16 Exhibit 32 is a true and correct copy of a letter, dated March 9, 2012, from Damian G.
17 Didden, of Wachtell, Lipton, Rosen & Katz LLP, counsel to Motorola, to Brad Smith, Microsoft's
18 General Counsel and Executive Vice President, Legal and Corporate Affairs. This letter discusses
19 both the confidential nature of information to be provided by Motorola to the European
20 Commission, as well as a confidential agreement of the parties, which Microsoft has indicated
21 should itself be filed under seal. (*See* Dkt. No. 448 at 6.) Accordingly, Exhibit 32 should be
22 sealed.

23 Exhibit 34 is a true and correct copy of the transcript of the August 17, 2012 deposition of
24 Michael Orchard, taken under oath in Chicago, Illinois. During this deposition, the transcript of
25 which has been designated "CONFIDENTIAL," Professor Orchard discussed proprietary source
26 code and confidential technical information of the parties. Disclosure of this information to third

1 parties and other party employees not covered by the protective order would have the potential to
 2 lead to competitive harm. Due to presence of this confidential information throughout the
 3 transcript, Exhibit 34 should be sealed in its entirety.

4 Exhibit 35 is a true and correct copy of the August 10, 2012 Rebuttal Expert Report of
 5 Timothy Drabik. In his report, which was designated “Contains Confidential Business Information
 6 Subject To Protective Order,” Dr. Drabik discussed sensitive and technical aspects of Microsoft’s
 7 products, general disclosure of which would have the potential to lead to competitive harm.
 8 Accordingly, Exhibit 35 should be sealed.

9 Exhibit 37 is a true and correct copy of the transcript of the deposition of Horacio E.
 10 Gutierrez, which was designated as Highly Confidential – Attorneys’ Eyes Only and taken under
 11 oath in Seattle, Washington, on April 4, 2012 (filed under seal). Mr. Gutierrez’s transcript was
 12 designated as Highly Confidential under the Protective Order in this case. During his deposition,
 13 Mr. Gutierrez disclosed confidential information about Microsoft’s business practices. Disclosure
 14 of this information to third parties and other party employees not covered by the protective order
 15 would have the potential to lead to competitive harm. Due to presence of this highly confidential
 16 information throughout the transcript, Exhibit 37 should be sealed in its entirety. This document
 17 was previously submitted to the Court as Exhibit 32 to the Second Declaration of Kevin J. Post in
 18 Support of Defendants’ Opposition to Microsoft’s Motion for Partial Summary Judgment of
 19 Breach of Contract (Dkt. No. 273), and was ordered sealed by the Court (Dkt. No. 336).

20 Exhibit 38 is a is a true and correct copy of the June 1, 2010 Patent Cross License
 21 Agreement entered into between Motorola, Inc. and Research In Motion Ltd., marked as Hearing
 22 Exhibit CX-93C and admitted into evidence in *In The Matter of Certain Gaming and*
 23 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
 24 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0397002-96 (filed
 25 under seal). This license agreement is a highly confidential agreement between Motorola, Inc. and
 26 Research In Motion, Ltd., a non-party to this litigation. Although the agreement indicates that the

parties may disclose its existence to third parties, the terms of the agreement were kept in confidence. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Due to presence of this highly confidential information throughout the license, Exhibit 38 should be sealed in its entirety. This document was previously submitted to the Court as Exhibit 5 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230), and was ordered sealed by the Court (Dkt. No. 294).

Exhibit 39 is a true and correct copy of excerpts of the transcript of the deposition of Matthew R. Lynde, Ph.D., which was taken under oath in San Francisco, California, on August 31, 2012 (filed under seal). That transcript has been designated "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER." At his deposition, Dr. Lynde testified extensively regarding the content of both his opening and rebuttal expert reports, which Microsoft has designated in their entireties as "MICROSOFT/MOTOROLA CONFIDENTIAL BUSINESS INFORMATION OUTSIDE ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER." Both Dr. Lynde's testimony and the expert reports referenced extensively throughout the course of his deposition disclose highly confidential Motorola and Microsoft information relating to business and licensing practices and history. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Accordingly, Exhibit 2 should be sealed in its entirety. The entire document from which these excerpts are drawn was previously submitted to the Court as Exhibit 38 to the September 5, 2012 Second Declaration of Samuel L. Brenner In Support of Motorola Mobility's and General Instrument's Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered sealed by the Court (Dkt. No. 432).

B. Defendants' Opposition to Microsoft's Motions *In Limine* ("Opposition")

Motorola respectfully requests that its Opposition be filed under seal because of extensive citation to, and description of: (1) confidential internal Motorola and Microsoft documents relating

1 to business and licensing practices and history; (2) expert reports filed in this action by
 2 Microsoft's and Motorola's expert witnesses, which the parties have designated as
 3 "MICROSOFT/MOTOROLA CONFIDENTIAL BUSINESS INFORMATION OUTSIDE
 4 ATTORNEY'S EYES ONLY – SUBJECT TO PROTECTIVE ORDER" and "HIGHLY
 5 CONFIDENTIAL – ATTORNEYS' EYES ONLY"; (3) confidential deposition testimony from
 6 this action; (4) confidential documents relating to the structure of negotiations between Microsoft
 7 and Motorola; and (5) confidential licenses between the parties and non-parties to this litigation.
 8 Disclosure of this information to third parties and other party employees not covered by the
 9 protective order would have the potential to lead to competitive harm. Because this information is
 10 contained in Motorola's Opposition, and in accordance with its responsibilities under the
 11 Protective Order, Motorola has marked this document as containing "OUTSIDE ATTORNEYS'
 12 EYES ONLY – SUBJECT TO PROTECTIVE ORDER." In lieu of sealing all of its Opposition,
 13 Motorola has redacted only those portions of its Opposition that discloses this confidential
 14 information. Redactions were made to limit as little information as possible, leaving the
 15 remainder available for public review.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Motorola respectfully requests that this Court order that the
 18 following documents be filed under seal:

- 19 1. Exhibits 13-14, 16-17, 19-20, 24-32, 34-35, and 37-39 to the Second Declaration of
 20 Stuart W. Yothers; and
- 21 2. Defendants' Opposition to Microsoft's Motions *In Limine* ("Opposition").

1 DATED this 15th day of October, 2012.

2 SUMMIT LAW GROUP PLLC

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16 And by

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 15th day of October, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley